

**REMARKS/ARGUMENTS**

Reconsideration is requested. Claims 1-10 are pending. Responsive to the Office Action of January 14, 2004, the Examiner's comments and the cited art have been noted and studied. For reasons to be set forth in detail below, it is respectfully submitted that the present application is in condition for allowance, and such action is requested.

Claims 1-10 are pending in this application. Independent claim 1 has been amended to recite that "the second stop junction impedes sample flow into the overflow region while the first part of the sample is being conveyed through the measurement area" (support at, for example, page 13, lines 7-13 of the specification).

It is respectfully submitted that the amendments above are supported by the specification, claims, abstract of the disclosure, and drawings as originally filed, and that no new matter has been added.

**35 U.S.C. §102 Rejections**

The subject matter of claims 1-5 was rejected under 35 U.S.C. §102(b) as anticipated Naka et al., EP 803,288 (hereinafter "Naka et al.").

Naka et al., as understood, describes a device for analyzing a sample that includes a suction pressure generating means, a drawing channel, an analytical section and a bypass channel (see, for example, col. 3, lines 9-23 of Naka et al.). The device described in Naka et al. is configured such that a liquid flow resistance (X) in a portion of the drawing channel, a liquid flow resistance (Y) in the bypass channel and a liquid flow resistance in (Z) in another portion of the drawing channel has the relationship of  $X > Y > Z$  (see, for example col. 3, lines 23-31 and col. 4, lines 24-29 of Naka et al.).

Naka et al. teaches that the liquid flow resistances (i.e., X, Y and Z) can be controlled by configuring the portions of the drawing channels and the bypass channel such that they are of **different diameters and lengths** (see, for example, col. 14, lines 47-55; col. 15, lines 13-27 and col. 17, lines 22-32 of Naka et al.). In particular, Naka et al. teaches that a portion of the bypass channel (element 6a in FIGs. 3, 4 and 5A-5D of Naka et al.) extending from a branching point with the drawing channel (see col. 14, lines 49-55 of Naka et al) should have a relatively small diameter.

In the Office Action, it is stated that a second stop junction is formed at the juncture of channel 6a and “overflow region” 6 in the device of Naka et al. (see page 2, lines 19-22 and page 6, lines 1-5 of the present Office Action).

Independent claim 1 of the present application, as amended, recites a medical diagnostic device that includes a second stop junction wherein “the second stop junction impedes sample flow into the overflow region while the first part of the sample is being conveyed through the measurement area.”

Assuming, for the sake of argument only, that the juncture of capillary 6a and overflow region 6 in the device of Naka is a second stop junction as recited in the present claims, this second stop junction of Naka does not serve to impede sample flow into overflow capillary 6 while sample is filling a measurement area. Rather it is bypass channel 6a itself, due to its small diameter and relatively long length, that serves to impede sample flow. This function of bypass channel 6a is noted in Naka et al. at, for example, col. 15, line 56 through col. 16, line 5 and col. 17, lines 26-32. In this regard, Applicant notes that Naka et al. states that the operative liquid flow resistance “in bypass channel 6a” (see, for example, col. 17, lines 28-29 of Naka et al.) is due to bypass channel 6a being “relatively long” and having a “small diameter” (see col. 15, lines 22-27 of Naka et al.). Thus, it is the diameter and length of bypass channel 6a that impedes flow, not its juncture with overflow region 6. Applicant, therefore, respectfully submits that Naka et al. does not describe, teach or suggest a second stop junction as recited in the present claims, namely a second stop junction that (i) impedes sample flow into an overflow region while sample is being conveyed through a measurement area and (ii) is weaker than a first stop junction such that excess sample passes through the second stop junction into the overflow region only after sample has filled the measurement area.

For at least the foregoing reason, Applicant submits that independent claim 1 is novel, non-obvious and, therefore, patentable over Naka et al.. Since claims 2-5 depend from and further limit independent claim 1, they are patentable for at least the same reason.

### 35 U.S.C. §103 Rejections

The subject matter of claims dependent 6-10 was rejected under 35 U.S.C. §103(a) as obvious over Naka et al. (EP 803,288) in view of Shartle et al., EP 974,840 (hereinafter

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“Shartle et al.”). Shartle et al. appears to describe a fluidic diagnostic device that includes a sample port, measurement area, channel, bladder, stop junction and a bypass channel (see col. 6, line 43 through col. 7, line 18; col. 9, lines 26-33 and FIGs. 1 and 6A-6D of Shartle et al.).


Shartle et al., as understood, does not cure the deficiency of Naka et al. discussed above with respect to independent claim 1. Therefore, since claims 6-10 depend from and further limit independent claim 1, they are patentable for at least the same reason as discussed above with respect to claim 1.

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### CONCLUSION

Applicant respectfully requests that, in light of the amendments and explanations above, the Examiner reconsider and withdraw his rejections. Applicant respectfully submits that the claims are in condition for allowance. In the event that minor claim amendments are necessary to meet formal requirements, Applicant invites the Examiner to telephone the undersigned at (408) 956-4790 so that issuance can be expedited.

Respectfully submitted,

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